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**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

In The Matter Of:)
) **FE Docket No. 16-144- LNG**
Driftwood LNG LLC)

**ANSWER OF DRIFTWOOD LNG LLC
IN OPPOSITION TO
LATE FILED MOTION TO INTERVENE, PROTEST AND COMMENT**

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy’s (“DOE”) regulations,¹ Driftwood LNG LLC (“Driftwood”) hereby submits this Answer to the Industrial Energy Consumers of America’s (“IECA”) late-filed Motion to Intervene, Protest, and Comments initially submitted to DOE Office of Fossil Energy (“DOE/FE”) on November 20, 2018 (“IECA Pleading”), in the above-captioned proceeding. Because: (1) the filing of the IECA Pleading was not completed until December 12, 2018, when IECA finally served Driftwood; (2) IECA has failed to show good cause for its late filing; (3) the IECA Pleading does not bear directly on Driftwood’s March 5, 2018 Supplement to Long-Term Authorization and Application for Long-Term Authorization (“Supplement”); and (4) the IECA Pleading is comprised of outdated data, false assertions, and faulty logic that do nothing to further the record, DOE/FE should deny IECA’s Motion to Intervene and ignore its misguided Protest and Comments. In support of this Answer, Driftwood states the following:

¹ 10 C.F.R. §§ 590.303(e) and 590.304(f) (2018).

I. BACKGROUND

On March 5, 2018, Driftwood filed its Supplement, seeking to adjust the export volumes previously authorized by DOE/FE in Order No. 3968 (“Driftwood Export Authorization”) and specified in Driftwood’s pending application in FE Docket No. 16-144-LNG (“Application”). On November 1, 2018, DOE/FE’s Notice of Supplement was published in the Federal Register,² providing: “Protests, motions to intervene ... and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, November 21, 2018.”³ Further, the Public Comment Procedures therein stated: “DOE/FE may disregard comments or protests that do not bear directly on the Supplement...” and “All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.”⁴

IECA did not serve Driftwood contemporaneously with its submittal of the IECA Pleading to DOE/FE, but rather, waited 22 days to do so. Accordingly, for the reasons discussed below, DOE/FE should not treat the IECA Pleading as timely filed until service was made upon Driftwood.

II. ANSWER

A. **The IECA Pleading was late filed and good cause has not been shown**

As a threshold matter, DOE/FE should reject the IECA Pleading as filed out of time. As noted above, the DOE/FE Notice of Supplement established November 21, 2018, as the last date for the filing of a Motion to Intervene, Protest or Comment and *expressly required* any such pleadings to comply with 10 CFR Part 590 (“DOE Regulations”). Among other things, DOE

² 83 Fed. Reg. 54,922 (Nov. 1, 2018).

³ *Id.*

⁴ *Id.* at 54,923.

Regulations require the filer of motions to serve such pleadings on the applicant.⁵ As such, the filing of the IECA Pleading was not completed until service was made on Driftwood on December 12, 2018, well after the established deadline of November 21, 2018.

Although the DOE Regulations allow DOE/FE to accept late-filed pleadings, this is only for “good cause shown” and, in the case of a motion to intervene, only “after considering the impact of granting the late motion on the proceeding.”⁶ Far from demonstrating good cause for its late service, and, thus, late filing, the IECA Pleading does not even acknowledge IECA’s failure to timely complete the DOE/FE filing process.

DOE/FE should *not* permit the late filing or grant IECA’s Motion to Intervene. IECA has failed to show good cause, and there is no basis for DOE/FE to unilaterally impute good cause for the late filing. This is not a case of misunderstanding or oversight of DOE/FE’s filing and service requirements. IECA has demonstrated a persistent pattern of willful failure to serve its pleadings. In DOE/FE Docket No. 11-161-LNG, IECA also was cited for failing to serve the applicant.⁷ In that proceeding, IECA’s motion to intervene was denied by DOE/FE.⁸ While the facts here are not identical to the prior proceeding, they, if anything, make a more compelling case for denial here.

In addition to already being directly on notice regarding the need to serve applicants, unlike in the earlier proceeding, here, IECA (1) has not attempted to show that it made a good faith effort to timely file in accordance with the DOE Regulations, and (2) does not claim to not take a position

⁵ See, 10 C.F.R. §§ 590.103(b), 590.107 and 590.304(d) (2018).

⁶ 10 C.F.R. §§ 590.303(d) and 590.304(e) (2018).

⁷ See, Answer of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC in Opposition to Late Filed Motions of Industrial Energy Consumer of America, DOE/FE Docket No. 11-161-LNG (October 15, 2013).

⁸ See, *Freeport LNG Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC*, DOE/FE Docket No. 11-161-LNG, Order 3357 (November 15, 2013) (denying IECA’s Consolidated Motions to Comment and Intervene Out of Time.) See also Answer of Venture Global LNG, LLC to Motions to Intervene and Protests filed Jan. 26, 2015 in FE Docket No. 14-88-LNG (fn. 3 “Calcasieu Pass notes that neither its company representative nor its counsel identified in the application received a service copy of IECA’s protest.”).

with regard to whether DOE/FE should grant the Supplement or that otherwise results in no prejudice to Driftwood. Moreover, in the earlier proceeding, there were other intervenors filing in opposition to the relevant application. In contrast, in the current docket, no other entity has sought intervention. Therefore, allowing IECA to intervene would convert this matter into a contested proceeding. Finally, as discussed further below, the IECA Pleading contains no new or useful information that would aid DOE/FE's review of the Supplement.

B. The IECA Pleading does not bear directly on the Supplement

The Supplement seeks a very minor adjustment in the total LNG volumes to be exported via the Driftwood LNG Facility. The IECA Pleading takes no issue with the amount of, or reason for, such adjustment, but, instead, serves purely as a broad attack on DOE/FE policies. The Notice of Supplement noted that DOE/FE may disregard comments or protests that do not bear directly on the Supplement.⁹ Because the IECA Pleading is devoid of any substantive factual content or legal arguments bearing with particularity on the Supplement, DOE/FE should disregard it.

C. The IECA Pleading does not add to the record in this proceeding

As discussed below, the stale data, misstatements and faulty logic contained in the IECA Pleading provide neither justification for acceptance on a late-filed basis nor contribute to the development of the record in this proceeding.

1. IECA's Key Point is flatly wrong

The Executive Summary of the IECA Pleading contains its self-styled "Key Point":

Consideration of LNG export applications need to lag the build-out of needed pipeline and storage capacity deliverability at peak demand needed to supply the U.S. homeowner, industrial and power generator consumers. If by chance that there is excess infrastructure capacity available to supply LNG export terminals, only then should these applications be considered.

⁹ 83 Fed. Reg. 54,923 (Nov. 1, 2018).

These statements demonstrate that IECA lacks the most basic understanding of the LNG and natural gas industries and relevant Federal law. As a practical matter, consideration of export applications needs to precede the build-out of required pipeline and storage capacity. The lead-time for development of an LNG export facility is considerably longer than that for natural gas pipeline and storage infrastructure that may support such a facility. For this reason, it is important that LNG export applications be approved promptly upon (or before) the approval (not construction) of related natural gas infrastructure, which allows the LNG export facility and other related natural gas infrastructure to be completed contemporaneously, lowering financing costs and keeping supply and demand components of the LNG and natural gas industries in balance.

Moreover, under the Natural Gas Act (“NGA”), DOE/FE lacks the discretion to delay consideration of LNG export applications. Section 717b(a) of the NGA directs DOE/FE to issue an order authorizing export “upon application” (barring a finding that such exports will not be consistent with the public interest).¹⁰ Further, with regard to exports to countries with which the U.S. has in effect a free trade agreement requiring national treatment of trade in natural gas, Section 717b(c) of the NGA requires applications to be granted without delay.¹¹

2. The IECA Pleading relies on stale data

At page 3, the IECA Pleading reproduces a figure from a “DOE report”. While IECA refers to the report’s title as “Microeconomic Impacts of LNG Exports from the United States” and no citation is provided, it appears that IECA is actually employing a misleadingly retitled figure from the DOE-commissioned, 2012 NERA Economic Consulting report titled: “Macroeconomic Impacts of LNG Exports from the United States” (“2012 Report”). This report,

¹⁰ 15 U.S.C. § 717b (2011).

¹¹ *Id.*

which is now more than six years old, has been superseded by two more recent DOE-commissioned studies.¹²

These later studies completely undermine the message that IECA seeks to deliver. As the 2018 Report states, under the most likely scenarios: “All negatively affected sectors, and in particular the natural gas [consumption] intensive sectors, continue to grow robustly at higher levels of LNG exports, albeit at slightly lower rates of increase than they would at lower levels.”¹³ In short, current studies show that the U.S., as a whole, will prosper with additional LNG exports.

3. The IECA wrongly attacks markets

The IECA Pleading asserts:

Why ‘markets’ cannot and should not be used to justify levels of specific LNG export applications volumes like this one or cumulative volumes of LNG exports is illustrated today with U.S. crude oil and gasoline prices. Because the U.S. crude oil price is connected to the global market, U.S. gasoline prices are at the highest levels in over four years.¹⁴

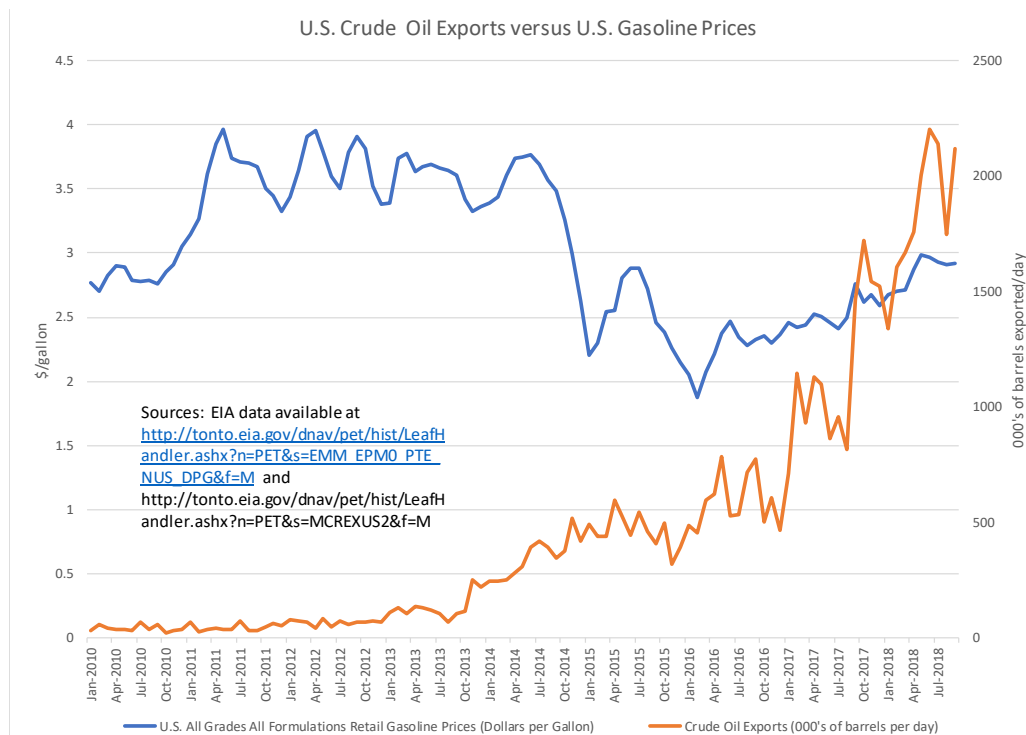
Here the IECA has cherry picked data and found a correlation that it claims shows causation even though its assertion is not supported by either economic theory or a review of data over a longer time period. The following graph shows monthly U.S. crude oil export volumes and U.S. average gasoline prices, all grades, since 2010. It can be readily seen that gasoline prices spiked in 2011- 2013, despite low U.S. crude oil exports and no growth in such exports. On the other hand, gasoline prices dropped even more substantially from 2014-2015, despite large and growing exports of U.S. crude oil. Further, gasoline prices in mid-2018 were equivalent to those in mid-2015, despite a three-fold increase in crude oil exports. In short, the U.S.’s experience with

¹² The most recent of these is NERA Economic Consulting’s June 7, 2018 report titled “Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (“2018 Report”).

¹³ *Id.*

¹⁴ IECA Pleading at 3.

crude oil exports does not demonstrate that an increase in LNG exports would lead to any meaningful increase in the domestic cost of natural gas.



4. The remaining sections of the IECA Pleading also fail to provide new or useful information for the record in this proceeding

Section III of the IECA Pleading alleges a violation of the Data Quality Act (“DQA”), which IECA attempts to support by referencing a short submittal to the DOE/FE that it made in July in another docket.¹⁵ However, this proceeding is not the proper vehicle for IECA to launch a collateral attack on DOE’s DQA compliance.

Section IV of the IECA Pleading sets forth a multitude of “sound-bite” arguments – all but one, a single paragraph long. The first item goes to the difficulty of building out new pipeline capacity. While this is a topic outside of DOE/FE’s purview, contrary to IECA’s assertions, LNG terminal developers generally stimulate and facilitate pipeline development by making the

¹⁵ July 27, 2018 Letter of Paul N. Cicio, President, IECA in DOE/FE Docket No. 2018-12621.

substantial long-term capacity commitments (frequently as foundation shippers) required to enable the financing and development of infrastructure to the benefit of U.S. customers and consumers, and mitigating the concerns raised by IECA.

The second item notes the DOE Electricity Office is examining vulnerability of pipeline infrastructure. Again, this is irrelevant to the current proceeding.

The third item alleges LNG buyers are “basically countries” that pass through their costs and frequently have peak demand in winter. None of these allegations are supported, much less quantified, nor, even if true, are they relevant to the Supplement.

The fourth item alleges that the U.S. natural gas resources in the lower 48 states are being rapidly consumed. However, far from running out of natural gas, new, vast discoveries of additional resources continue to be made and cost-reducing technology continues to advance. For example, the largest continuous oil and gas deposit ever discovered in the U.S. up to that point in history was made only about two years ago -- November of 2016.¹⁶ Yet, that discovery was eclipsed earlier this month, when the U.S. Geological Survey announced a find containing 281 trillion cubic feet of natural gas, more than 17 times the size of the November 2016 discovery.¹⁷

IECA further observes that the U.S. operates under an elected form of government subject to policy swings, which could result in increased natural gas costs and prices. However, IECA fails to draw any connection between this point and the actions requested by the Supplement.

IECA also makes the unsupported and irrelevant claim that only 10% of oil and gas companies had positive cash flow in the first half of 2018. From this, IECA leaps to a conclusion that the price of natural gas must rise. DOE/FE should ignore this unsubstantiated claim on how

¹⁶ *USGS Estimates 20 Billion Barrels of Oil in Texas' Wolfcamp Shale Formation*, USGS, (December 15, 2016), <https://www.usgs.gov/news/usgs-estimates-20-billion-barrels-oil-texas-wolfcamp-shale-formation>.

¹⁷ *Assessment of Undiscovered Continuous Oil and Gas Resources in the Wolfcamp Shale and Bone Spring Formation of Delaware Basin, Permian Basin Province, New Mexico and Texas*, 2018, USGS, (December 2018) <https://pubs.usgs.gov/fs/2018/3073/fs20183073.pdf>

an unidentified group of companies' performance for a six-month period will affect natural gas prices in the long term.

Finally, IECA alleges that foreign consumers of U.S. LNG exports are receiving the benefits of U.S. infrastructure without paying for it, but fails to explain how or why this is the case. As such, DOE/FE must disregard IECA's unsubstantiated and nonsensical assertion and reach the common sense conclusion that if foreign customers were not paying for the costs of infrastructure, the owners of such infrastructure would decline to provide service, and financial institutions similarly would decline to provide the very substantial financing support required to develop these facilities.

III. CONCLUSION

For the foregoing reasons, DOE/FE should reject the IECA Pleading and deny IECA party status in this proceeding.

Respectfully submitted,

/s/Lisa M. Tonery
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Driftwood LNG LLC

December 20, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding.

Dated at New York, N.Y. this 20th day of December, 2018.

/s/Dionne McCallum-George
Dionne McCallum-George
Legal Secretary on behalf of
Driftwood LNG LLC